



NETAPP MARKETPLACE

Online Purchase Agreement

This Online Purchase Agreement (“Agreement”) applies to sales by NetApp, Inc., NetApp B.V. and/or any of their Affiliates (collectively, “NetApp”) directly to a customer for its own use (“Customer” or “You”) through the NetApp Marketplace website (“Site”), unless Customer has entered into a separate agreement with NetApp governing such sale. By ordering, accepting delivery, or using Cloud Data Services or otherwise proceeding with any transaction with NetApp through the Site, Customer agrees to this Agreement. By clicking the button or mechanism designed to acknowledge agreement to these terms and conditions on the Site, Customer is indicating that it has read these terms and conditions, understands them, and agrees to be legally bound to them, on behalf of the company or other legal entity for which Customer is acting and Customer represents and warrants that it has the right, power and authority to act on behalf of and bind its company. Customers who place an Order through the Site understand and agree that the version of these terms and conditions in effect on the date Customer places that Order shall govern that Order. These online purchase terms may change from time to time, so review them upon submission of each Order, even if Customer has reviewed them before.

1. DEFINITIONS

1.1. Affiliate(s). Any entity, directly, or indirectly through one or more intermediaries, that is controlled by, or is under common control by NetApp, but only for so long as such relationship exists. For the purposes of this definition, “control” means the ability to direct its affairs and/or to control the composition of its board of directors or ownership of more than fifty percent (50%) (or such lesser percent as may be the maximum that may be owned by foreign interests pursuant to the applicable laws of the country of incorporation) of (a) the shares of stock entitled to vote for directors in the case of a corporation; or (b) the equity or interests in profits in the case of a business entity other than a corporation.

1.2. Cloud Data Service. A NetApp cloud service made available to Customers on demand via the internet. A complete list of NetApp Cloud Data Services which may be subject to this Agreement can be accessed at <https://www.netapp.com/us/how-to-buy/stc.aspx>.

1.3. Cloud Data Service Subscription. The specified period of continuous time, as identified on an Order, during which Customer may access and use the Cloud Data Service.

1.4. Order. An electronic order submitted to NetApp through the Site for the purchase of a Cloud Data Service Subscription.

2. PAYMENT PROCESSING.

2.1. US Dollars. Customers will be billed in U.S. Dollars only.

2.2. Taxes and Duties. Customer is solely responsible for the payment of taxes (except taxes based on NetApp’s net income), fees, duties and charges, and all related penalties and interest, that arise from its utilization or NetApp’s provision of the Cloud Data Service. If Customer is tax-exempt, then Customer will provide NetApp with tax exemption certificates or other documentation acceptable to the taxing authorities not later than thirty (30) days from the Effective Date. If Customer does not provide such documentation to NetApp, NetApp reserves the right to include such taxes in the invoice.

2.3. Order Delivery. Delivery of the Cloud Data Service occurs when NetApp makes the enabling key or access credentials available electronically via e-mail or otherwise to Customer or, if an enabling key is not required, when NetApp makes such Cloud Data Service available for use electronically via e-mail or otherwise by Customer.

2.4. Order Acceptance. NetApp may limit, refuse or cancel any Order at its sole discretion. NetApp may also require additional qualifying information prior to accepting or processing any Order. Once NetApp receives your Order, we’ll provide you with an email order confirmation. Your receipt of an Order confirmation, however, does not signify NetApp’s acceptance of your Order, nor does it constitute confirmation

of our offer to sell; we are simply confirming that we received your order. NetApp reserves the right at any time after receiving your Order to accept or decline your Order for any reason. If NetApp cancels an Order after Customer has submitted payment for an Order, NetApp will refund the amount paid.

2.4. Refund Policy. All Orders are nonrefundable. Any purchase by you is deemed completed upon submission and acknowledgement that the form of payment provided in connection with the transaction may be charged or invoiced by NetApp or a third-party payment processor.

2.5. Invoicing. NetApp will be entitled to invoice Customer for the Cloud Data Service upon the submission and acceptance by NetApp of an Order.

2.6. Payment Terms. Unless earlier payment is required by applicable law, regulation, or executive order, Customer will make full payment in the currency specified in the invoice, without set-off and in immediately available funds, not later than thirty (30) days of the date of NetApp’s invoice.

2.7. Remedies for Non-payment. Customer payment of an amount less than the invoice amount will not be deemed as acceptance of payment in full, nor will any endorsement or statement on any check or letter accompanying any payment or check be deemed an accord and satisfaction. NetApp may accept such payment or check without prejudice to NetApp’s right to recover the balance of any amount due or pursue any other remedy provided for in this Agreement or by law or in equity. NetApp has the right to apply any payment received from Customer to any account of Customer which is due and/or delinquent. If Customer fails to make timely payment, in addition to all other available remedies, NetApp may decline to make further provision of the Cloud Data Service to Customer.

2.8. Third Party Payment Processing. Customers may utilize a third-party payment processor as a means of payment for a Cloud Data Service Subscription, and provided NetApp accepts payments from such third party provider on your behalf, your use of such processors will be subject to the processor’s own terms and conditions. NetApp reserves the right, in its sole and absolute discretion, to change the permitted methods of payment, including without limitation, the credit cards and/or other types of payment options we can accept, at any time. NetApp is not responsible for, and Customer agrees that it will hold NetApp harmless from and against, any liability resulting from the acts or omissions of any third-party payment processor.

3. TERM AND TERMINATION

3.1. Term. A Cloud Data Service Subscription will commence as of the date of delivery and continue for the Cloud Data Service Subscription term identified in an Order.

3.2. Auto Renewal. If Customer elects to establish Auto-Renewal for its Cloud Data Service Subscription, each Cloud Data Service Subscription will automatically renew for additional periods equal to the expiring Cloud Data Service Subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 90 days before the end of the then current Cloud Data Service Subscription term. The Cloud Data Service price during any renewal term may increase by up to 7% above the applicable pricing in the prior term, unless NetApp provides Customer notice of different pricing at least 120 days prior to the expiration of the then current Cloud Data Service Subscription term.

3.3. Termination. NetApp may terminate a Cloud Data Service Subscription immediately upon written notice to Customer (a) if Customer commits a material breach of this Agreement, including failure to remit payments when due and, in the event that the breach is remediable, fails to remedy it within thirty (30) days of NetApp's written notice requiring Customer to do so; or (b) if Customer becomes insolvent; applies for or consents to the appointment of a trustee, receiver, or other custodian; makes a general assignment for the benefit of creditors; initiates any bankruptcy, debt arrangement or other case or proceeding under any bankruptcy or insolvency law; or becomes subject to any dissolution or liquidation proceedings.

3.4. Rights upon Termination or Expiration. Termination or expiration of a Cloud Data Service Subscription will not relieve Customer from its payment obligations with respect to any sums accrued prior to termination or expiration, which will become immediately due and payable. Upon termination of a Cloud Data Service Subscription, all rights to use the Cloud Data Service cease. The rights and obligations imposed by this Section 5.4. will survive termination of the Agreement.

4. TERMS OF SERVICE. Additional terms and conditions applicable to the Cloud Data Services associated with an Order are set forth at <https://www.netapp.com/us/how-to-buy/stc.aspx> and are incorporated by reference.

5. MISCELLANEOUS. This Agreement, together with the terms incorporated in Section 4, represents the entire agreement and understanding between the Parties with respect to an Order. This Agreement supersedes any previous communications, representations or agreements between the Parties and prevails over any conflicting or additional terms in any applicable quote, purchase order, acknowledgement, or similar communications between the Parties. Any documentation pertaining to the Cloud Data Service referenced herein that is issued by Customer will be deemed to incorporate and be subject to this Agreement, except where the Parties expressly agree in writing to variations thereto. The pre-printed terms or general terms and conditions on any purchase order, contractual document or other similar correspondence originating by either Party will have no effect.